

**REMARKS**

The Official Action mailed July 15, 2003, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Accordingly, the Applicant respectfully submits that this response is being timely filed.

The Applicants note with appreciation the consideration of the Information Disclosure Statements filed on January 4, 2002 and May 22, 2002.

Claims 1-21 were pending in the present application prior to the above amendment. Claims 4, 8 and 12 have been canceled, and claims 1, 5 and 9 have been amended to include the features of allowable claims 4, 8 and 12. Accordingly, claims 1-3, 5-7, 9-11 and 13-21 are now pending in the present application, of which claims 1, 5, 9, 13, and 17 are independent. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested. The Applicants note with appreciation the allowance of claims 13-21.

The Official Action rejects claims 1-3, 5-7 and 9-11 as anticipated. Although the Official Action cites "Imahashi et al (US 5,294,518)," the '518 patent is to Brady et al. It appears that the Official Action intended to cite U.S. Patent No. 5,529,630 to Imahashi et al. which is of record.


The Official Action states that "[c]laims 4, 8 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable over the prior art if rewritten in independent form including all of the limitations of the base claims and any intervening claims" (page 4, Paper No. 7). In response, the Applicants have amended claims 1, 5 and 9 to recite that the refractive index is measured by an ellipsometer. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e) are in order and respectfully requested.

The Official Action rejects claims 1-21 under the doctrine of obviousness-type double patenting over claims 1-38 of U.S. Patent No. 6,336,969 to Yamaguchi et al. and over claims 1-29 of U.S. Patent No. 6,059,873 to Yamaguchi et al.

In response to this rejection, a *Terminal Disclaimer* is submitted herewith. Upon filing of this *Terminal Disclaimer*, the claims of the present invention are now believed to be in condition for allowance. Reconsideration and withdrawal of the obviousness-type double patenting rejection are requested.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

  
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